

THE WHITE HOUSE

WASHINGTON

October 29, 1975

P.C. files
Ex Order

MEMORANDUM FOR:

PHIL BUCHEN
BILL COLBY
HENRY KISSINGER
ED LEVI
JIM LYNN
DON RUMSFELD
JIM SCHLESINGER

FROM:

JACK MARSH

SUBJECT:

Draft Executive Order Imposing
Restrictions on Intelligence Activities

Transmitted herewith is a draft of this executive order annotated with your comments, except those of DOD, which have not yet been received.

Unfortunately, this procedure of all interested parties commenting on a draft has not produced a final order, because the adoption of one party's suggestion often causes unanticipated problems for another party. For example, the last draft included for the first time information on foreign "persons" in the definition of "foreign intelligence." This has the unintended result of subjecting the Immigration and Naturalization Service to the order's restrictions since the information it collects is primarily on foreign persons.

In an effort to finalize this order, we are considering scheduling daily meetings until agreement is reached or fundamental disagreements are distilled for Presidential decision. These meetings should be attended by principals or delegates authorized to speak for principals in this matter.

The other substantive disagreements appear to relate to:

- (1) The exception for information from abroad or foreign sources about the domestic activities of

NSC review
completed.

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U.S. citizens reasonably believed to be involved in international terrorist or narcotics activities or working in collaboration with a foreign nation or organization. (Section II (a) (2) (ii))

(2) The exception which would legitimate sharing of information on domestic activities of U.S. citizens among agencies. (Section II (a) (2) (v))

(3) The provision relating to electronic surveillance. (Section II (d))

DRAFT: October 28, 1975

EXECUTIVE ORDER _____

ESTABLISHING RESTRICTIONS ON FOREIGN
INTELLIGENCE ACTIVITIES

Previous guidance on the relationship between the intelligence agencies and United States citizens was unclear. This order clarifies that relationship by detailing those activities which are prohibited. Without setting forth all restrictions under which foreign intelligence agencies are obliged to operate, nor derogating from any other laws, rules, regulations, or directives further restricting the activities of these agencies, it is hereby ordered as follows:

SECTION I. Definitions. As used in this Order the following terms shall have the meanings ascribed to them below:

- (a) "Collection" means the gathering and storage, or the gathering and forwarding, of information.
- (b) "Domestic activities" means activities within the United States.
- (c) "Foreign intelligence" means information, other than foreign counterintelligence, on the capabilities, intentions, and activities of foreign nations, organizations or persons.

(Note: Justice would refer to "activities of foreign powers or their agents," to assure that INS is not defined as a foreign intelligence agency.)

(d) "United States citizen" means United States citizens and other persons who have been accorded the legal rights of United States citizens.

(Note: CIA would include only citizens and "permanent resident aliens" in the definition.)

(e) "Foreign counterintelligence" means activities conducted to protect the United States and United States citizens from foreign espionage, sabotage, subversion, assassination, or terrorism.

(Note: OMB would have foreign counterintelligence mean "information on the capabilities, intentions and activities of foreign powers or their agents with respect to their collection, evaluation or dissemination of intelligence about the United States.")

(f) "Incidental reception" means the receipt of information, collection of which by an agency is otherwise prohibited by this order.

(Note: OMB and the Vice President would add to the definition "and which is collected in the course of an agency's authorized foreign intelligence or counterintelligence activities and without specific intent to secure such information from United States citizens.")

(g) "Foreign intelligence agency" means any department or agency of the United States government, or component thereof, which is primarily engaged in foreign intelligence or foreign counterintelligence activities.

SECTION II. The following activities shall not be conducted either by any foreign intelligence agency or by any other department or agency in pursuit of foreign intelligence or foreign counterintelligence:

(a) Collection, evaluation, correlation or analysis, of information concerning the domestic activities of United States citizens; provided, however, that nothing herein shall preclude:

(1) the collection, evaluation, correlation and analysis of information of foreign intelligence or foreign counterintelligence interest derived from public sources; or

(2) the collection, evaluation, correlation and analysis of:

(i) information on current or former employees (including military personnel and employees of other Federal departments or agencies detailed for service with the foreign intelligence agency); applicants for employment with such agency; voluntary sources or contacts or individuals who in good faith are reasonably believed to be potential sources or contacts; current and former contractors and current or former employees or applicants for employment by such contractors; and all persons not included above who must be given access to classified information which could disclose foreign intelligence

or foreign counterintelligence sources and methods; provided, however, that collection of such information is done only in accordance with law and by written authority from the head of such agency to determine the fitness of such persons to become or remain associated with such agency or to have such access, or in the case of a voluntary source or contact, to determine suitability or credibility.

(Note: CIA would add: "or in the case of a former employee to investigate matters related to his period of employment.")

(ii) information about a United States citizen who in good faith is reasonably believed to be involved in international terrorist or narcotics activities or working in collaboration with a foreign nation or organization, but only if the information is collected abroad or from foreign sources in the United States in the course of an authorized foreign intelligence or foreign counterintelligence activity.

(Note: OMB would substitute "working for" in place of "working in collaboration with.")

(iii) Foreign intelligence from United States citizens provided on a witting and voluntary

basis. The foreign intelligence agency shall disclose its identity when seeking such foreign intelligence within the United States from United States citizens. When collection of foreign intelligence within the United States results in the incidental reception of information from or about unknowing United States citizens, however, the receiving agency shall be permitted to make appropriate use of such information as permitted under this Order.

(iv) Administrative information of the kind customarily developed and utilized by most departments and agencies of the Federal government.

(v) Information provided by another Federal Agency which had been lawfully compiled by that agency in furtherance of its authorized mission and responsibility, when such information is provided:

(a) in furtherance of the authorized mission and responsibilities of the receiving agency;

(b) in good faith under a reasonable belief that the information is relevant to the receiving agency; and

(c) under such guidelines and procedures as may be issued by the Attorney General designed to ensure the protection of the constitutional and statutory rights of United States citizens.

(Note: OMB and the Vice President would delete subsection (v).)

(3) the transmission to any law enforcement agency with appropriate jurisdiction of any information concerning criminal activities that is received through incidental reception.

(b) Physical surveillance of United States citizens except to the extent that such surveillance is in accordance with law and is:

(1) Surveillance, upon written approval by the head of the foreign intelligence department or agency, of individuals currently or formerly employed by that agency, its present or former contractors, or such contractors' employees, for the purpose of protecting foreign intelligence sources and methods from unauthorized disclosure; or

(2) Surveillance of a person having contact with any persons described under subparagraph (1), or foreign nationals in the United States in connection with foreign intelligence or counterintelligence operations, but only to the extent necessary to identify such person.

(c) Electronic surveillance of United States citizens except in accordance with law and under procedures approved by the Attorney General.

(Note: The Vice President would refer to "monitoring the communications of United States citizens by electronic means except . . .")

(Note: Justice would substitute a new Section II(c): "Electronic surveillance of United States citizens except in accordance with law and under procedures approved by the Attorney General, and in no instance shall the Central Intelligence Agency engage within the United States in the electronic surveillance of United States citizens."

(d) Testing of electronic surveillance equipment within the United States except in accordance with law and under procedures approved by the Attorney General.

(e) Any opening of United States mail or examination of envelopes except in accordance with the provisions of United States postal laws and regulations.

(f) Access to Federal income tax returns or tax information except in accordance with statutes and regulations.

(g) Infiltration or secret participation in any organization composed primarily of United States citizens for the purpose of reporting on its activities or membership.

(h) Experimentation with drugs on human subjects, except with the informed consent of each such human subject and in accordance with the guidelines of the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research.

(i) Operation of a proprietary company on a commercially competitive basis with United States businesses except to the minimum extent necessary to establish commercial credibility. No investments by a proprietary company shall be made on the basis of any substantive

intelligence not available to the public.

SECTION III. Nothing in this Order shall prohibit the retention of information collected in violation of this Order as required by law for possible court action.

(Note: Justice would have Section III read: "Nothing in this Order prohibits an agency from retaining information when retention is required by law, such as retention required to preserve evidence or other information for possible court action.")

SECTION IV. No foreign intelligence agency shall:

(a) provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration or state or local police organizations of the United States except as expressly authorized by law; or

(b) participate in or fund any law enforcement activity within the United States except as may be authorized by law.

Provided, that this prohibition shall not preclude:

(1) Cooperation between a foreign intelligence agency and appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of the foreign intelligence agency or preventing espionage or other criminal activity related to foreign intelligence or foreign counterintelligence; or

(2) Provision of specialized equipment or technical knowledge for use by any other Federal department or agency.

(Note: The Vice President would delete equipment" in subsection (a), and have subsection (b) prohibit participation in or funding of "any police, law enforcement or internal security function within ...")

SECTION V. Foreign intelligence agency personnel may be detailed elsewhere within the Federal government as authorized by law.

Employees so detailed shall be responsible to the host agency and shall not report to their parent agency on the affairs of the host agency except as may be directed by the host agency. The head of the host agency and any subsequent successor shall be informed of the detailee's association with the parent agency.

(Note: NSC would reverse the order of IV and V.)

SECTION VI. Nothing in this Order shall prohibit any agency having law enforcement responsibilities from discharging such responsibilities pursuant to law. Nor shall this Order apply to any activities of the Federal Bureau of Investigation.

DCI/DDCI
Routing Slip

TO:

		ACTION	INFO.			ACTION	INFO.
1	DCI			11	LC		✓
2	DDCI			12	IG		✓
3	S/MC			13	Compt		✓
4	DDS&T		✓	14	Asst/DCI		✓
5	DDI		✓	15	AO/DCI		
6	DDM Ref	✓		16	Ex/Sec		✓
7	DDO		✓	17			
8	D/DCI/IC		✓	18			
9	D/DCI/NIO		✓	19			
10	GC		✓	20			

SUSPENSE _____

Date

Remarks:

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